

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>Case No. 8:13CR105</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>-vs-</b>	)	<b>MOTION TO DISMISS</b>
	)	
<b>TIMOTHY DEFOGGI,</b>	)	
<b>Defendant.</b>	)	

COMES NOW Timothy DeFoggi, by and through his attorney, John S. Berry, pursuant to Rule 12(b)(3)(B) of the F.R. Crim. P. and moves the court for an order dismissing Count I of the Indictment on the grounds that it does not fairly and adequately apprise Defendant of the charges against him.

In support of this motion, the Defendant would show this court the following, to wit:

1. Count I alleges that the Defendant was engaging in a Child Exploitation Enterprise in violation of 18 U.S.C. 2252 A(g);
2. This count alleges that he did so as a part of the series of felony violations constituting three or more separate incidents and involving more than one minor victim, which offenses are described in Counts IV through VII, and he committed these offenses with three or more other persons;

3. Counts IV through VII, as referenced in Count I as being the predicate offenses for the Child Exploitation Enterprise, all allege violations of 18 U.S.C. 2252A(a)(5)(B), which makes it an offense to access child pornography with the intent to view it;
4. The Indictment does not, however, apprise the Defendant of the identities of those with whom the Defendant allegedly acted “in concert” or even state affirmatively that the United States is even aware of the requisite number of people with whom the Defendant allegedly acted in concert.
5. Nor does the Indictment state affirmatively that more than one victims were involved in the predicate offenses listed in Counts IV-VII;
6. Accordingly, the Defendant has been neither fairly informed of the charges against him nor been given sufficient information upon which he can plead conviction or acquittal as a bar to subsequent prosecution.

WHEREFORE, the Defendant respectfully moves the Court to dismiss Count I of the Indictment against the Defendant because it fails to adequately apprise the Defendant of the charges against him.

Respectfully submitted,  
Timothy Defoggi, Defendant

/s/ John S. Berry  
John S. Berry, #22627  
BERRY LAW FIRM  
2650 North 48<sup>th</sup> Street  
Lincoln, NE 68508  
[john@jsberrylaw.com](mailto:john@jsberrylaw.com)  
(402) 466-8444

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon Michael Norris, Assistant U.S. Attorney and Keith A. Becker, U.S. Department of Justice, by electronically serving a copy of the same to both via CM/ECF, on this the 6<sup>th</sup> day of March, 2014.

/s/ John S. Berry  
John S. Berry, #22627